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**SENT VIA EMAIL & REGULAR U.S. MAIL**

Murry Wilson  
Department of Planning  
County of San Luis Obispo  
San Luis Obispo, California 93401  
[mwilson@co.slo.ca.us](mailto:mwilson@co.slo.ca.us)

**RE: Las Pilitas Quarry Draft Environmental Impact Report**

Dear Mr. Wilson:

I submit these comments on behalf of Margarita Proud in response to the Draft Environmental Impact Report ("DEIR") for the proposed Las Pilitas Quarry. For the reasons that are set forth below, the DEIR is incomplete or otherwise does not comply with the requirements of the California Environmental Quality Act ("CEQA"). The County therefore must revise the DEIR as indicated and resubmit the revised draft for public review and comment.

**Project Objectives**

Project objectives must disclose the underlying purpose of a project in order to guide the selection of alternatives that would be evaluated by the EIR and the lead agency. CEQA Guideline ("Guideline") §15124(b). Many of the Project Objectives listed in the DEIR are inappropriate because they do not relate to an "underlying purpose" of the Project. For example, the DEIR uncritically lists as an objective of the Project, protection of "significant mineral resources from land uses that threaten their availability for future mining." It is difficult if not impossible to see how a quarry, in and of itself, would prevent land uses in neighboring properties that could be incompatible with mining.

This purported objective amounts to an admission that sand and gravel mining is inherently incompatible with other land uses, including the existing rural residences that surround the Project site. Moreover, the objective of protecting mineral resources (presumably on-site) from incompatible land uses is vague and difficult to understand as it is not clear what land uses would be incompatible with mining. Finally, influencing land use in the project's vicinity (presumably by preventing

incompatible land uses, including but not limited to rural residential and related uses) is not an appropriate project objective. The DEIR must be revised to exclude this purported project objective or to explain why it is appropriate.

The stated project objectives are inconsistent with the project description. According to the DEIR, due to the “type of product proposed, and the nature of the granite material to be mined, the applicant is not proposing to wash any of the material that is processed.” AR 2-9. The “type of product proposed” presumably refers to “concrete-grade aggregate,” the production of which, according to the DEIR, is a project objective. DEIR 2-2. Yet, according to the applicant’s May 1, 2013 letter to Water Resources Advisory Council, the DEIR’s reference to concrete grade aggregate is “confused” because it was based on old project description, which assumed the Project would produce PCC grade aggregate. Contrary to the Applicant’s characterization, however, because the DEIR refers to the production of concrete grade aggregate as a project objective, which in light of the Project applicant’s admission, is clearly untenable. The DEIR therefore must be revised and recirculated in order to clearly state the Project’s objectives.

### **Project Description**

According to the DEIR, “[t]he applicant is requesting a 25- to 58-year timeframe for the mining operation and phased reclamation of the mined site.” This time-frame is unnecessarily vague and indefinite. The difference between 25 and 58 years is 33 years. As the potential land-uses and traffic volumes are likely to be change significantly in 58 years, the Project approval should be limited to a much shorter period, eg. 30 years.

As explained above, according to the DEIR, the Project will produce concrete and PCC-grade aggregate. The DEIR further claims that owing to the “and the nature of the granite material to be mined, the applicant is not proposing to wash any of the material that is processed.” This statement clearly implies that it would be possible to produce concrete-grade aggregate without washing. As the Applicant’s own letter admits, however, it is impossible to produce unwashed concrete-grade aggregate. It is therefore entirely unclear why the DEIR claims the Project can produce concrete-grade aggregate without the need for washing when the applicant itself admits this cannot be done. The DEIR must therefore be revised and recirculated to make clear that the Project would not be producing concrete-grade aggregate, and that if the applicant ever decides to change the project description to produce higher quality aggregate, it would be required to undergo specific and further environmental review.

### **Air Quality**

The DEIR’s analysis of the potential mitigation measures for addressing the Project’s emission of ozone precursors (ROG+NO<sub>x</sub>), which the DEIR admits would be significant, is inadequate. In fact, the DEIR admits that the Project would exceed both the daily (25 pounds per day) and annual (25 tons per day) emissions thresholds as set by the San Luis Obispo Air Pollution Control District (“SLOAPCD”). DEIR 4.3-21. Despite this admission, the DEIR fails to adequately consider the feasibility of off-site mitigation, which the DEIR admits would be needed to augment the largely ineffective potential onsite mitigation measures.

Regarding mitigation of ozone precursors, the DEIR first considers but ultimately rejects as ineffectual most on-site mitigation measures, such as deployment of electrical equipment. 4.3-23 to

24. The DEIR states that “portable aggregate processing equipment could be operated by grid-supplied electrical power rather than by diesel engines or generators” but dismisses this potential mitigation because its feasibility could not be established.

The DEIR briefly considers other potential mitigation measures, such as restrictions on the simultaneous use of heavy equipment, but again fails to consider the feasibility of this option.

The DEIR then considers off-site mitigation because it concludes that the Project’s operational emissions would exceed the SLOAPCD’s threshold. Off-site mitigation may include “specific emissions reductions achieved through retrofit activities to improve energy efficiency, improvements or funding to increase the use of transit or alternative transportation, ...”

The DEIR includes only a cursory consideration of the cost of off-site mitigation. 4.3-24. (“approximate cost of [mitigation] would range from 30 to 50 cents per ton of aggregate produced over the 25 year lifetime of the project.”) The DEIR fails to include an analysis of the economic feasibility of off-site mitigation:

The economic effect of this additional cost is not clear, and it may depend on whether or not similar air emissions charges are imposed either directly or indirectly on other aggregate sources. The details of this type of analysis and the determination of specific emission reduction measures and costs are matter for consultation between the applicant and SLOAPCD. At this time, it is assumed that the additional mitigation measures beyond those typical measures associated with quarry projects . . . would not be implemented.

It is the legislative policy of California “that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects....Los Angeles Unified School Dist. v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1028-1029 (“LA Unified”). To implement this policy, CEQA requires that agencies “mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” Pub. Res. Code § 21002.1(b); Napa Citizens for Honest Gov’t v. Napa County Bd. Of Supervisors, (2001) 91 Cal.App.4th 342, 360 (“the EIR must propose and describe mitigation measures that will minimize the significant environmental effects that the EIR has identified.”)

The DEIR’s analysis of mitigation measures to address the Project’s ozone precursor emissions is woefully inadequate and violates CEQA. The DEIR is deficient in that it does not include a thorough discussion of potential mitigation measures, including a discussion of the feasibility of each mitigation measure considered.

The DEIR is deficient and violates CEQA also because it impermissibly defers the formulation of off-site mitigation measures for addressing the Project’s emission of ozone precursors. Deferral of the formulation of mitigation measures is permissible only if early formulation of the mitigation measures is impractical, and the agency adopts specific performance criteria to guide the future formulation of mitigation measures. Sacramento Old City v. City Council (1991) 229 Cal.App.4th 1011, 1028-9, CEQA Guideline §15126.4(a)(1)(B). Here, there is no evidence that formulation of mitigation measures, with or without consultation with the SLOAPCD, was not practical. But even it was impossible to formulate precise mitigation measures at this stage, the DEIR could have included a

more thorough discussion of potential mitigation measures, and included a commitment to complete mitigation of the impact by imposing a standard or performance criteria. As it is, the DEIR makes no concrete recommendations regarding off-site mitigation (which it admits would be necessary to address the project's impacts) and assumes no additional mitigation beyond "typical measures" associated with quarries would be recommended. As such, the DEIR violates CEQA because it does not propose or make a commitment to full mitigation of the impact.

The DEIR violates CEQA also to the extent that it does not analyze the economic feasibility of off-site mitigation. Pub. Res. Code §21061.1 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." "CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are **truly infeasible.**" City of Marina v. Board of Trustees of the California State University (2006) 39 Cal.4th 341, 368-369. (Emphasis added.) Here, the DEIR merely states that off-site mitigation could cost between 30 to 50 cents per ton, but fails to explain the basis for this calculation. It also incorrectly assumes, moreover, that the life of the project is 25 years, when as we state above, the DEIR claims the life of the project could be anywhere between 25 and 58 years. The DEIR violates CEQA to the extent that it does not analyze the feasibility of off-site mitigation, and compounds the problem by concluding that the Project's ROG+NOx emissions would be "significant and not mitigable." 4.3-24. This conclusion is not supported by any substantial evidence or adequate explanation.

#### Air Quality: PM10/fugitive dust

As with the discussion of ROG+NOx, the DEIR's discussion of PM10/fugitive dust is inadequate and in violation of CEQA. The DEIR admits that these emissions must be considered significant because they exceed the SLOAPCD's threshold of significance, but makes no attempt to quantify the proposed mitigation measures or to consider additional measures to reduce the significance of these impacts to a less than significant level. As with ROG+NOx mitigation measures, the DEIR impermissibly defers consideration of additional mitigation measures without a commitment to reducing the impact to less than significant: "additional mitigation measures may be required for the control of fugitive dust and PM10, these can be developed in consultation with the SLPAPCD." 4.3-28. As explained above, deferral of the formulation of mitigation measures in this manner violates CEQA because the EIR has not established any performance criteria (such as compliance with the SLOAPCD standards), and has not adequately considered the feasibility of potential mitigation measures, and has not made a commitment on behalf of the County to fully and adequately mitigating the Project's air quality impacts.

#### Diesel particulate matter (DPM)

The DEIR admits that Project DPM emissions will likely be above the threshold of significance, and cause an unacceptable increase in cancer rates, yet concludes that with the imposition of Mitigation Measure (MM) AQ-1a, this impact will be "minimized" (4.3-30) and would be reduced the threshold of significance of an increase cancer risk of 10 in one million. 4.3-32. This conclusion, however, is not supported by any adequate explanation or analysis. The DEIR must be revised in order to disclose the purported relationship between the proposed mitigation measures and the expected reduction in the cancer risk.

### **Biological impacts**

The DEIR does not include an adequate discussion of potential impacts on biological resources and an analysis of mitigation measures. The DEIR fails to adequately describe the potential biological resources on-site because of the limited surveys conducted. The brief botanical survey in October 2009, and again in May and July 2011 were not timed to adequately assess the presence of spring flowering plants. The evidence further shows that the authors did not survey for all potentially present species. The pond turtle, for example, could be present in the on-site pond, but the DEIR admits that the condition and management of the pond was not known. Likewise, the DEIR's discussion of potential impacts on bats shows that no surveys were conducted to detect the presence of bats or suitable roosting sites. 4.5-36.

The DEIR's discussion of mitigation measures is likewise inadequate. In reference to the impact on rare plants, the DEIR states that because the site does not appear to contain any federally protected plants, any impacts on rare plants would be adequately mitigated by the preservation of open space as required by MM BIO-1. 4.5-34. Yet, the DEIR does not seem to track the County's threshold of significance, according to which Project impacts on "unique or special status species or their habitat" or a reduction in the "extent, diversity or quality of native or other important vegetation" could be considered significant. See. 4.5-33. The County's threshold of significance does not support the DEIR's assumption that only impacts on federally protected species are to be considered significant. Accordingly, the DEIR's emphasis on the absence of federally protected species is misplaced; the DEIR must be revised to include a discussion of whether the Project's impact on unique or special status species or their habitat amounts to a significant and adverse biological impact within the meaning of CEQA.

The DEIR's bald assertion that preservation of 69 acres of on-site habitat will adequately mitigate the impact on the loss of sensitive or rare plants is not supported by substantial evidence or adequate analysis. There is no discussion, for example, of the presence or absence of the same type of plants that are likely to be lost due to the implementation of the Project, such as Shining Navarrets, La Panza Mariposa Lily, etc. See, 4.5-33. An EIR "must contain facts and analysis, not just the agency's bare conclusions or opinions." Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392.

The evidence, moreover, does not support the conclusion that MM BIO-1 would be feasible because BOP-1 does not require an endowment to support the management of the proposed preserve. Feasible means "means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. CEQA Guideline §15364. Without an endowment or other revenue stream to support the long-term management of the habitat, there is no evidence to suggest the habitat would be adequately managed.

Despite admitting that suitable habitat for both native and migratory birds and sensitive bat species exists on the project site, the DEIR does not include adequate surveys for these species. 4.5-35 to 36. The DEIR contends that the Project's impact on these species would be less than significant because the imposition of MM BIO-4 and BIO-5 would avoid direct loss of these species. Ibid. The DEIR fails, however, to propose any mitigation measures to address the indirect impacts to these species in the form the loss of habitat and harassment (i.e. from noise, dust, vibration etc.) caused by the implementation of the Project. The DEIR must be revised to analyze the Project's indirect impacts on these species, require mitigation measures if the impact is deemed to be significant.

Finally, the DEIR does not include a discussion of the project's potential impacts on steelhead trout, a federally protected species, and other native fish and water-dependent residents of the Salinas River such as the red-legged frog. Although the DEIR claims the Project will not directly affect the Salinas River (which traverses the project site), the DEIR fails to consider the Project's indirect impacts, which could result from withdrawing an estimated 7 acre feet per year (see discussion of water supply below) from the river underflow, as well as potential discharge of contaminated storm-water runoff, dust, and other impacts that may be expected when a large industrial facility such as the proposed mine is placed adjacent to a major water body.

### **Water Supply**

The DEIR does not include an adequate discussion of project's impact on water supplies. The DEIR's claim that the Project would use far less water than previously established on the project site is not supported by substantial evidence, which to the contrary, supports the conclusion that the project would use considerably more water than any documented water use in the recent in the past. The DEIR is deficient also to the extent that it fails to adequately analyze the project's potential impacts on other nearby drinking water wells, which like the project well, draw on the Salinas River underflow.

The DEIR violates CEQA also because it does not explain the basis for assuming that the Project would use only 5,500 gallons of water per day. This assumption must be explained in reference to common industry standards. I request access to any information or documents in the Project file that the County contends supports this assumption, including but not limited to any calculations, studies, case studies, etc.

The DEIR contains a discussion of past water use at 4.13-4. According to this discussion, the two residences on site have historically used between 1.5 and 1.7 acre feet per year (AFY). The DEIR assumes a figure of 2 AFY for the purpose of its discussion, but by rounding up, the DEIR impermissibly overstates the Project's historical water use by a factor of between %33 to %18. The DEIR must use the documented baseline water use for its analysis not a substantially larger rounded number.

The DEIR also claims that the site contains two other "water storage facilities" with a combined storage of 0.7 AF. The presence of these storage facilities does not, however, establish additional water rights or evidence greater historical water use. The DEIR also claims that the Statements of Diversion and Use ("SDU") "indicate that approximately 94 AFY has historically been diverted for temporary storage . . ." Ibid. The DEIR appears to be confused about the significance of this ponded water. According to SDU No. 15136, the water in this pond was stored for emergency use only, it was never actually consumed on the project site. See, Supplemental Statement of Water Use No S015136 for 2006-8, attachment A to these comments. The baseline water use on the site, therefore, is 1.5-1.7 AFY, not 94 AFY as the DEIR suggests.

Despite this evidence, the DEIR claims the Project water use would be "lower than the water used in previous agricultural activities on the property, and much lower than the potential use indicated in the Statements of Diversion and Use." 4.13-11. The DEIR's claim that agricultural water use on site has been historically greater than the anticipated 7 AFY is not supported by any evidence presented in the DEIR or the DEIR and the Water Supply Assessment ("WSA") on which it relies. If evidence of relevant agricultural water use exists, I ask to be provided with a copy of all such evidence as soon as

possible.

The DEIR and WSA seem to confuse the concept of water use and water rights. It is undisputed that the water stored in the 92.7 pond was not historically consumed for any agricultural or other purposes on site. The evidence shows, moreover, that the full 92.7 acre feet was never diverted on an annual, which DEIR apparently assumes. The DEIR does not refer to any evidence or discussion of the amount of water that was diverted on an annual basis. Even if the evidence supported the DEIR's claim that the project applicant has a "right" to 92.7 AFY (a claim that Margarita Proud very much disputes), it still does not follow that the applicant has established a baseline level of water use equal to 92.7 AFY. The DEIR must be revised accordingly.

The DEIR also seems to ignore the fact that historically, the ranch used water from Moreno Creek, but the mine now proposes to withdraw water from the Salinas River. The applicant has not established or even suggested it has historically withdrawn water from the Salinas River, so this would be a new use. The DEIR must be revised to address this issue. See, 4.13-13.

The DEIR must be revised also to include a discussion of the potential impacts of the Project's expected water use on the water supply (i.e. Salinas River) and nearby water users who rely on the same source of water for their own use. The DEIR never considers the Project's potential impact on nearby residents who rely on their water wells for domestic water use. The reported well test (4.13-11) did not measure the draw down on nearby wells. Before making claims about the Project's potential impact on nearby residents' ability to use water wells for domestic purposes, the County must perform adequate tests to determine the impact of pumping from the project well on nearby residents' well(s). The pumping test must also measure the draw down and include a record of the recovery time. The DEIR's conclusion that the existing well can operate at the rate of 25 gallon per minute (4.13-11) is not reliable unless the well test shows this level of production can be sustained continuously. The well test relied on by the DEIR only lasted 4 hours. The DEIR's conclusion that the Project has a reliable source of water supply is not established by the available evidence.

### **Traffic and Circulation**

The DEIR's analysis of Project impacts on traffic and circulation is inadequate and must be revised because the Project's expected impacts on local intersections and safety is grossly understated.

The DEIR underestimates traffic impacts in part because it uses an average daily estimate of truck traffic, but the estimated daily truck traffic will likely be regularly exceeded during heavy construction season. The DEIR discloses that for large projects, daily truck trips may exceed 800, but does not include any analysis of seasonal variations, which may result in daily truck trips that exceed the expected 273 during summer construction season. 2-9.

Likewise, the DEIR offers no explanation or evidence to justify the assumption that the delivery of concrete materials for recycling will result in only 75 truck trips. The overall net increase in the number of daily truck trips could easily exceed 75 if the DEIR's assumption that %50 of concrete delivery trucks will haul back processed aggregate proves to be wrong. The DEIR must supply evidence and explanation to support this assumption, and include a condition (as mitigation) that limits the number of delivery trucks.

As explained in the June 5, 2013 peer review and comments of traffic consultants, Arch Beach

(“Archer”), the DEIR grossly underestimates Project traffic by failing to take into account the difference between truck and passenger car traffic. On average, trucks displace three passenger cars, such that each project-related truck will have a traffic impact that is equal to three passenger cars. As explained in the Highway Capacity Manual (cited by Archer), in order to accurately assess traffic impacts caused by this Project, the traffic study must multiply the number of Project-related trucks by a factor of three (passenger-car equivalent or PCE factor) and reassess the Project’s impacts based on the PCE-adjusted numbers. As explained in the Archer Beach comments, the Project’s PCE-adjusted traffic impact is much larger than the DEIR’s estimate, which means the Project will result in significant direct and cumulative adverse traffic impacts.

Following adjusting the traffic study as explained by Archer, the DEIR must reassess the Project’s impact on the intersection of El Camino and Estrada. The DEIR must be revised to show that the Project would result in a significant degradation of the level of service (LOS) at this intersection, and require adequate mitigation accordingly. See, Archer comments at 6-7. The DEIR must be revised also to include an adequate queuing analysis. Archer’s analysis shows that the addition of truck traffic from the Project would significantly exacerbate an existing problem of queuing exceeding storage capacity, which results in vehicles queuing on railroad tracks on Estrada Ave. See, Archer at 8. The DEIR must evaluate the proposed mitigation measures (by Archer) for feasibility and require as a condition of approval all measures that are determined to be feasible.

The DEIR must be revised also to accurately reflect and analyze the hazardous conditions that would be created as a result of trucks accessing the site through a driveway on Highway 58. The DEIR assumes that under “normal” conditions, the proposed driveway access on Route 58 would function adequately without any improvements. 4.11-23. This statement, however, is not supported by any evidence, such as a detailed study of expected delay caused by trucks waiting to turn into the driveway or those leaving the site. It would appear that especially during peak hours truck, access to and from the site would cause considerable traffic delay both east and west of the site. The delay and slow moving trucks will likely create an unsafe condition on Route 58, which according to the County’s significance criteria, should be considered a significant impact. See, 4.11-15. The DEIR must be revised to adequately address this problem. This analysis must be conducted in light of expected heavier-than-average summer season truck traffic.

After conducting an adequate analysis of potential delay, the DEIR must consider potential mitigation measures, including but not limited to a dedicated left turn lane (traveling east) and a west bound dedicated truck lane.

Finally, the DEIR must be revised in order to correct the DEIR’s contention that the Route 58 ramp to Highway 101 has lower than average accident rates. 4.11-9 to 10. Figure 4.11-6 clearly indicates that this ramp has an accident rate that is 3 times greater than state average.

### **Land Use**

The DEIR does not include an adequate discussion of the Project’s consistency with the existing rural residential uses in the Project’s immediate vicinity. The discussion at 4.14-6 suggests that Project impacts on neighboring residences, such as parking traffic, dust, etc., “have been appropriately addressed . . .”. The DEIR suggests that the only significant impact that could not be mitigated to a less than significant level is noise. This is not the case, as the DEIR in its current iteration does not include adequate mitigation measures to adequately mitigate the adverse impact associated with the



emission of dust, PM10, ROG+NOx, and diesel particulate matter.

The DEIR's discussion of Land Use compatibility must also be revised to address the applicant's stated objective of "protecting significant mineral resources from land uses that threaten their availability for future mining." 2-2. The DEIR's discussion of land use must address how this objective would be met, and the effect it might have on the continued development of rural residential land use and agricultural practices in the project's vicinity.

### **CONCLUSION**

For all of the foregoing reasons, the DEIR must be revised and recirculated.

Sincerely,

/s/  
Babak Naficy, for Margarita Proud